

PART TWO: OVERVIEW

Role and functions of the Court

The Federal Magistrates Court of Australia (Federal Magistrates Court) was established to handle less complex matters in the areas of family law and general federal law. The Court shares jurisdiction with the Family Court of Australia (Family Court) and the Federal Court of Australia (Federal Court).

The Federal Magistrates Court is a federal court established under the Constitution by the *Federal Magistrates Act 1999*. The Federal Magistrates Act commenced operation on 23 December 1999 when the Act received royal assent. The first court sittings occurred on 3 July 2000 in Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Parramatta and Townsville.

Jurisdiction is conferred on the Federal Magistrates Court by laws of the Commonwealth other than the Federal Magistrates Act. The initial jurisdiction of the Court was conferred by the *Federal Magistrates (Consequential Amendments) Act 1999*. The jurisdiction of the Court is expanded by amendment of Commonwealth legislation to confer the new jurisdiction.

The Federal Magistrates Court has now been operating for five years and has established itself as the basic trial court in significant areas of jurisdiction of the federal judicial system. Over half of all migration matters, nearly all bankruptcy work, and a significant amount of family law children's and property applications are now completed in the Federal Magistrates Court.

To ensure that the Court has sufficient judicial resources to keep pace with the increasing demand for its services, the number of judicial appointments increased from 23 federal magistrates to 31 in the past twelve month period. The government has also announced that two additional federal magistrates will be appointed in the next financial year to deal with family law matters in the Sydney CBD.

Objective of the Court

The objective of the Federal Magistrates Court is to provide a simple and accessible alternative to litigation in the Federal Court or the Family Court.

The Federal Magistrates Court encourages the use of dispute resolution methods such as counselling, mediation and conciliation. The Court does not assume that every matter ends in a contested hearing and where practical, parties are encouraged to resolve their disputes through negotiation. This approach has many benefits and is likely to result in a more enduring resolution of a dispute.

The administration of the Court

Mr John Pascoe commenced as Chief Federal Magistrate of the Federal Magistrates Court on 14 July 2004, replacing Ms Diana Bryant who was appointed as Chief Justice of the Family Court of Australia.

Mr John Mathieson commenced as Chief Executive Officer on 26 April 2005, replacing Mr Peter May.

Section 89 of the Federal Magistrates Act provides that the federal magistrates are responsible for the administrative affairs of the Court. The Chief Federal Magistrate is responsible for the day to day management of the Court.

The way in which the Court is governed is expected to change with the passage of the *Migration Litigation Reform Bill 2005* (see page 53).

The federal magistrates are assisted by the Chief Executive Officer who can exercise powers on their behalf in relation to the Court's administrative affairs.

A system of coordinating federal magistrates for each location was introduced in 2004-05 to assist in the management of registry-specific issues.

A conference is conducted twice a year for federal magistrates to discuss and plan the strategic direction of the Court. A range of committees assist the Court to make, implement and monitor administrative decisions between these meetings.

Organisation

The Federal Magistrates Court consists of the Chief Federal Magistrate and 30 federal magistrates.

The federal magistrates appointed to the Court as at 30 June 2005 were:

Chief Federal Magistrate John Pascoe - Sydney (appointed 14 July 2004)
Federal Magistrate Warren Donald - Newcastle (appointed 13 June 2000)
Federal Magistrate Christine Mead - Adelaide (appointed 13 June 2000)
Federal Magistrate Judy Ryan - Parramatta (appointed 13 June 2000)
Federal Magistrate Michael Baumann - Brisbane (appointed 19 June 2000)
Federal Magistrate James Brewster - Canberra (appointed 19 June 2000)
Federal Magistrate Norah Hartnett - Melbourne (appointed 19 June 2000)
Federal Magistrate Stephen Scarlett - Sydney (appointed 19 June 2000)
Federal Magistrate John Coker - Townsville (appointed 26 June 2000)
Federal Magistrate Murray McInnis - Melbourne (appointed 26 June 2000)
Federal Magistrate Rolf Driver - Sydney (appointed 31 July 2000)
Federal Magistrate Kenneth Raphael - Sydney (appointed 31 July 2000)
Federal Magistrate Stuart Roberts - Hobart and Launceston (appointed 4 December 2000)
Federal Magistrate Maurice Phipps - Melbourne (appointed 18 December 2000)
Federal Magistrate Jennifer Rimmer - Brisbane (appointed 5 February 2001)
Federal Magistrate Michael Connolly - Melbourne (appointed 4 June 2001)
Federal Magistrate John Walters - Melbourne (appointed 29 October 2001)
Federal Magistrate Stewart Brown - Darwin (appointed 5 November 2001)
Federal Magistrate Shenagh Barnes - Sydney (appointed 5 November 2001)
Federal Magistrate Giles Coakes - Newcastle (appointed 12 January 2004)
Federal Magistrate Stuart Lindsay - Adelaide (appointed 19 January 2004)
Federal Magistrate Michael Jarrett - Brisbane (appointed 2 February 2004)
Federal Magistrate Victoria Bennett - Melbourne (appointed 10 May 2004)
Federal Magistrate Sylvia Emmett - Parramatta (appointed 5 July 2004)
Federal Magistrate Grant Riethmuller - Melbourne (appointed 19 July 2004)
Federal Magistrate Michael Lloyd-Jones - Sydney (appointed 26 July 2004)
Federal Magistrate Daniel O'Dwyer - Melbourne (appointed 2 August 2004)
Federal Magistrate Matthew Smith - Sydney (appointed 2 August 2004)
Federal Magistrate Graham Mowbray - Sydney (appointed 2 August 2004)
Federal Magistrate Nick Nicholls - Sydney (appointed 23 August 2004)
Federal Magistrate Robyn Sexton - Parramatta (appointed 27 September 2004)

Jurisdiction of the Court

The Federal Magistrates Court shares concurrent jurisdiction with the Family Court (family law) and the Federal Court (general federal law) in those areas of law where it has jurisdiction.

Family law

The areas of family law in which the Court has jurisdiction are:

- ~ Applications for divorce
- ~ Applications concerning spousal maintenance
- ~ Property disputes where the property in dispute is valued up to \$700,000 (if the property is worth more, the Court can hear the matter if both parties consent)
- ~ All parenting orders, whether the parents are married or unmarried
- ~ Enforcement of family law orders made by either the Federal Magistrates Court, the Family Court or by State courts
- ~ Location and recovery orders and warrants for the apprehension or detention of a child
- ~ Determination of parentage and recovery of child bearing expenses.

The Federal Magistrates Court has the same jurisdiction as the Family Court in matters relating to child support legislation.

General federal law

In general federal law, the Federal Magistrates Court has jurisdiction to hear matters relating to administrative law, bankruptcy, copyright, migration, privacy, trade practices matters and unlawful discrimination.

The Court shares jurisdiction with the Federal Court in the following areas:

- ~ Unfair trade practices matters arising under Division I of Part V of the *Trade Practices Act 1974* and product safety and information matters arising under Division IA of Part V with power to award damages up to a maximum of \$200,000
- ~ Matters arising under the *Bankruptcy Act 1966*
- ~ Applications made under the *Administrative Decisions (Judicial Review) Act 1977*

- ~ Appeals from the Administrative Appeals Tribunal that are transferred to the Federal Magistrates Court by the Federal Court
- ~ Unlawful discrimination matters under the *Human Rights and Equal Opportunity Commission Act 1986*
- ~ Enforcement of determinations of the Privacy Commissioner and private sector adjudicators pursuant to the *Privacy Act 1988*
- ~ *Migration Act 1958* — jurisdiction to review the visa-related decisions of the Migration Review Tribunal, Refugee Review Tribunal and the Administrative Appeals Tribunal
- ~ Civil copyright matters under the *Copyright Act 1968*. In particular, the Court can deal with matters arising under Parts V, VAA, IX and section 248J of the Copyright Act.

Federal Magistrates Court Rules

There were no amendments to the Federal Magistrates Court Rules during 2004-05. It is expected that amendments providing for specific rules in relation to migration proceedings filed in the Court will be made following legislative passage of the *Migration Litigation Reform Bill 2005*.

The Federal Court and the Federal Magistrates Court are working together to develop harmonised bankruptcy Rules. Both courts are working with the Family Court to achieve consistency in Rules in preparation for the commencement of amendments to the *Bankruptcy Act 1966* and the *Family Law Act 1975* to be introduced by the *Bankruptcy and Family Law Legislation Amendments Act 2005*. It is considered that harmonised rules in the bankruptcy jurisdiction will be advantageous to the courts and litigants.

Federal Magistrates Regulations 2000

The following miscellaneous amendments were made to the Regulations during 2004-05:

- ~ Federal Magistrates Amendment Regulations (No 1) 2004 — introduced a new fee for an application for substituted service of a bankruptcy notice from 1 November 2004.
- ~ Federal Magistrates Amendment Regulations (No 2) 2004 — introduced amongst other items, a new fee for the review of decisions of a Registrar (other than in family law or child support proceedings) from 24 November 2004.

- ~ Federal Magistrates Amendment Regulations 2005 (No 1) — increased the filing fee for an application for divorce in the Federal Magistrates Court from \$288.00 to \$334.00 from 1 July 2005.

Pursuant to regulations 14 and 15, some fees payable in the Court increased from 1 July 2004 (see page 45).